

CANARY IN THE COAL MINE

Porn censorship in the
post-digital age

Introduction

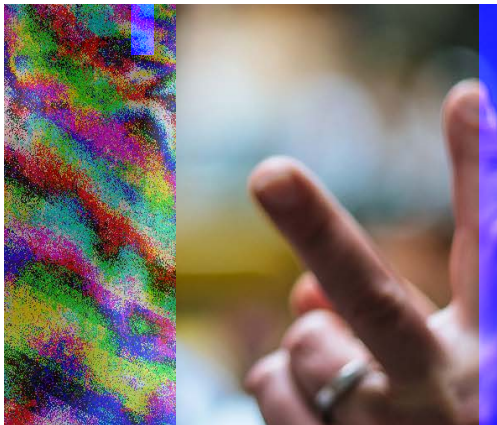
Myles Jackman described pornography as ‘the Canary in the Coalmine of Free Speech’ in reference to the UK Government’s new porn block. Amongst it’s description of how it will try to restrict our content-access a convoluted meaning of ‘Pornographic Material’ is written in legalese. A far better explanation is the ‘Miller Test’, three requirements content must fulfil to be classified as ‘obscene’ based largely on community standards, but this localised version can only go so far in the post-digital age.

Despite the monumental scale of the task the UK Government has taken on, the porn block does not cover any social media, leaving a hole in the net for children to see porn. Tumblr decided it would try and help the morale crusade by using machine-learning to ban any adult content on their site. Needless to say it has not worked, and only really succeeded in annoying its users and highlighting the pornbots that have avoided the algorithm.

This publication seeks to draw attention to the problems facing our internet today. Go from here to read more about the challenges and issues of modern censorship and see for yourself the damage and results of broken blocks.

Chapter 1

Protection from what?
p.6



Chapter 2

The worst idea ever
p.20



Chapter 3

To block or not to block
p.50



chapter 1

PROTECTION FROM WHAT?

To set the scene we need to ask the question, what is pornography?

One answer can be found in U.S. Law, commonly referred to as the 'Miller Test'. It asks three questions about the content. If it fulfils all three criteria, it's classified as obscene.

Originating in 1973, the ideals of community standards no longer apply to an internet based, global community.

What one local community of people accept, another can completely disagree.

<https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity>

<https://www.thoughtco.com/the-miller-test-721197>

<https://mtsu.edu/first-amendment/article/1585/the-miller-test>

<https://supreme.justia.com/cases/federal/us/413/15/>

<https://yalelawtech.org/2012/10/15/the-miller-test-and-the-value-of-obscene-speech/>



Citizen's guide to U.S. Federal Law on Obscenity

18 U.S.C. § 1460- Possession with intent to sell, and sale, of obscene matter on Federal property

18 U.S.C. § 1461- Mailing obscene or crime-inciting matter

18 U.S.C. § 1462- Importation or transportation of obscene matters

18 U.S.C. § 1463- Mailing indecent matter on wrappers or envelopes

18 U.S.C. § 1464- Broadcasting obscene language

18 U.S.C. § 1465- Transportation of obscene matters for sale or distribution

18 U.S.C. § 1466- Engaging in the business of selling or transferring obscene matter

18 U.S.C. § 1466A- Obscene visual representations of the sexual abuse of children

18 U.S.C. § 1467- Criminal forfeiture

18 U.S.C. § 1468- Distributing obscene material by cable or subscription television

18 U.S.C. § 1469- Presumptions

18 U.S.C. § 1470- Transfer of obscene material to minors

18 U.S.C. § 2252B Misleading domain names on the Internet

18 U.S.C. § 2252C Misleading words or digital images on the Internet

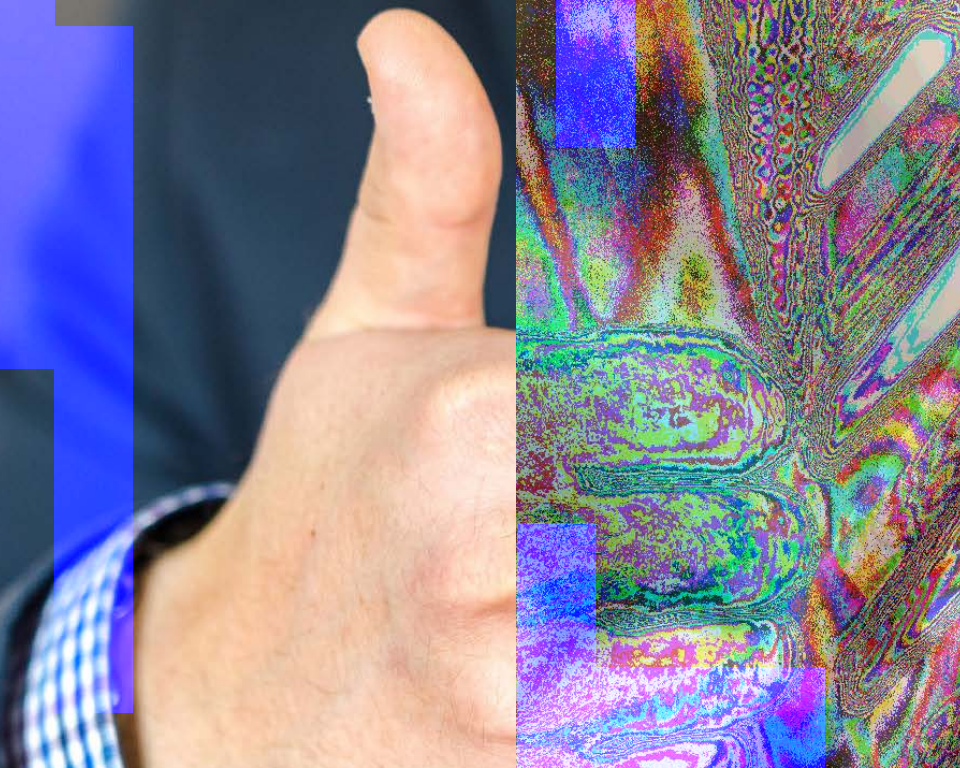
The U.S. Supreme Court established the test that judges and juries use to determine whether matter is obscene in three major cases: *Miller v. California*, 413 U.S. 15, 24-25 (1973); *Smith v. United States*, 431 U.S. 291, 300-02, 309 (1977); and *Pope v. Illinois*, 481 U.S. 497, 500-01 (1987). The three-pronged *Miller* test is as follows:

1. Whether the average person, applying contemporary adult community standards, finds that the matter, taken as a whole, appeals to prurient interests (*i.e.*, an erotic, lascivious, abnormal, unhealthy, degrading, shameful, or morbid interest in nudity, sex, or excretion);
2. Whether the average person, applying contemporary adult community standards, finds that the matter depicts or describes sexual conduct in a patently offensive way (*i.e.*, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, lewd exhibition of the genitals, or sado-masochistic sexual abuse); and
3. Whether a reasonable person finds that the matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.

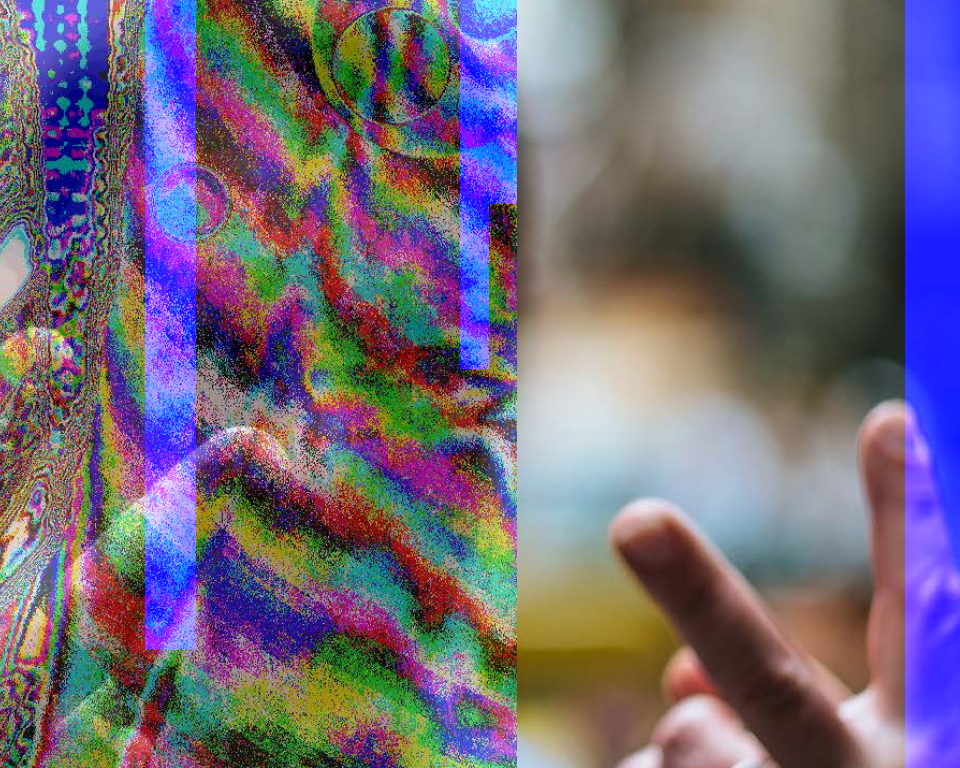
Any material that satisfies this three-pronged test may be found obscene.

Federal law prohibits the possession with intent to sell or distribute obscenity, to send, ship, or receive obscenity, to

erotic, lascivious, abnormal, unhealthy,
degrading, shameful, or morbid interest
in nudity, sex, or excretion



import obscenity, and to transport obscenity across state borders for purposes of distribution. Although the law does not criminalize the private possession of obscene matter, the act of receiving such matter could violate the statutes prohibiting the use of the U.S. Mails, common carriers, or interactive computer services for the purpose of transportation (See 18 U.S.C. § 1460; 18 U.S.C. § 1461; 18 U.S.C. § 1462; 18 U.S.C. § 1463). Convicted offenders face fines and imprisonment. It is also illegal to aid or abet in the commission of these crimes, and individuals who commit such acts are also punishable under federal obscenity laws.



In addition, federal law prohibits both the production of obscene matter with intent to sell or distribute, and engaging in a business of selling or transferring obscene matter using or affecting means or facility of interstate or foreign commerce, including the use of interactive computer services. (See 18 U.S.C. § 1465; 18 U.S.C. § 1466). For example, it is illegal to sell and distribute obscene material on the Internet. Convicted offenders face fines and up to 5 years in prison.

Moreover, Sections 1464 and 1468 of Title 18, United States Code, specifically prohibit the broadcast or distribution of obscene matter by radio communication or by cable or

subscription television respectively. Convicted offenders under these statutes face fines and up to 2 years in prison.

Obscenity Involving Minors

Federal statutes specifically prohibit obscenity involving minors, and convicted offenders generally face harsher statutory penalties than if the offense involved only adults.

Section 1470 of Title 18, United States Code, prohibits any individual from knowingly transferring or attempting to transfer obscene matter using the U.S. mail or any means or facility of interstate or foreign commerce to a minor under 16 years of age. Convicted offenders face fines and imprisonment for up to 10 years.

In addition, Section 1466A of Title 18, United State Code, makes it illegal for any person to knowingly produce, distribute, receive, or possess with intent to transfer or distribute visual representations, such as drawings, cartoons, or paintings that appear to depict minors engaged in sexually explicit conduct and are deemed obscene. This statute offers an alternative 2-pronged test for obscenity with a lower threshold than the *Miller* test. The matter involving minors can be deemed obscene if it (i) depicts an image that is, or appears to be a minor engaged in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse and (ii) if the image lacks serious literary, artistic, political, or scientific value. A first time offender convicted under this statute faces fines and at least 5 years to a maximum of 20 years in prison.

There are also laws to protect children from obscene or harmful material on the Internet. For one, federal law pro-

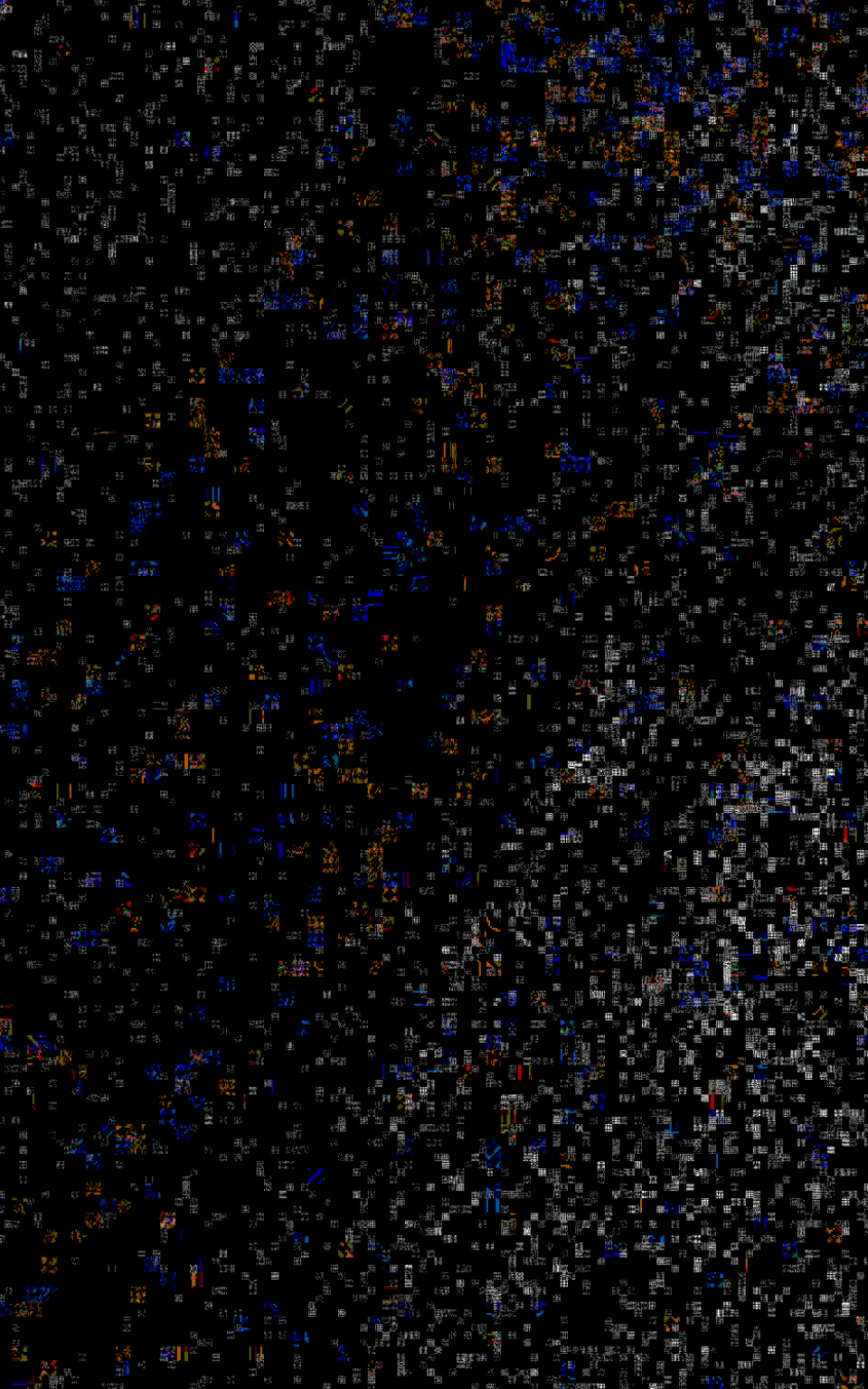
The standard of what is harmful to minors may differ from the standard applied to adults. Harmful materials for minors include any communication consisting of nudity, sex or excretion that lacks serious literary, artistic, political, or scientific value for minors.



hibits the use of misleading domain names, words, or digital images on the Internet with intent to deceive a minor into viewing harmful or obscene material (See 18 U.S.C. §§ 2252B, 2252C). It is illegal for an individual to knowingly use interactive computer services to display obscenity in a manner that makes it available to a minor less than 18 years of age (See 47 U.S.C. § 223(d) –Communications Decency Act of 1996, as amended by the PROTECT Act of 2003). It is also illegal to knowingly make a commercial communication via the Internet that includes obscenity and is available to any minor less than 17 years of age (See 47 U.S.C. § 231 –Child Online Protection Act of 1998).

The standard of what is harmful to minors may differ from the standard applied to adults. Harmful materials for minors include any communication consisting of nudity, sex or excretion that (i) appeals to the prurient interest of minors, (ii) is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, (iii) and lacks serious literary, artistic, political, or scientific value for minors.

In addition to facing imprisonment and fines, convicted offenders of federal obscenity laws involving minors may also be required to register as sex offenders. Furthermore, in some circumstances, obscenity violations involving minors may also be subject to prosecution under federal child pornography laws, which yield serve statutory penalties (For more information, see Citizen’s Guide to U.S. Federal Child Pornography Laws).



chapter 2

THE WORST IDEA EVER

The UK porn block the world's first to stop under-age web users seeing porn on the internet.

Otherwise known as the, 'Digital Economy Act 2017 Part 3' it seeks to enforce age verification checks whenever somebody tries to visit a porn site.

This is not a good or popular idea, being described as, 'The worst idea ever'.

After many delays it will come into effect on July 15 2019.

[http://www.legislation.gov.uk/
ukpga/2017/30/part/3](http://www.legislation.gov.uk/ukpga/2017/30/part/3)

[https://www.ageverificationregulator.
com](https://www.ageverificationregulator.com)

[http://time.com/5352875/uk-porn-
block-age-verification/](http://time.com/5352875/uk-porn-block-age-verification/)

[https://www.bbc.co.uk/news/
newsbeat-43795806](https://www.bbc.co.uk/news/newsbeat-43795806)

[https://www.wired.co.uk/article/uk-
porn-age-verification](https://www.wired.co.uk/article/uk-porn-age-verification)

DIGITAL ECONOMY ACT 2017

CHAPTER 30

PART 3 ONLINE PORNOGRAPHY

14. INTERNET PORNOGRAPHY: REQUIREMENT TO PREVENT ACCESS BY PERSONS UNDER 18

(1) A person contravenes this subsection if the person makes pornographic material available on the internet to persons in the United Kingdom on a commercial basis other than in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18.

(2) The Secretary of State may make regulations specifying, for the purposes of this Part, circumstances in which material is or is not to be regarded as made available on a commercial basis.

(3) The regulations may, among other things, prescribe circumstances in which material made available free of charge is or is not to be regarded as made available on a commercial basis.

(4) Regulations under subsection (2) may provide for circumstances to be treated as existing where it is reasonable to assume that they exist.

(5) Regulations 17 to 20 and 22 of the Electronic Commerce (EC Directive) Regulations 2002 (S.I. 2002/2013) apply in relation to this Part, despite regulation 3(2) of those Regulations.

(6) For the purposes of this Part, making material available on the internet does not include making the content of an on-demand programme service available on the internet in the course of providing such a service.

(7) In subsection (6), “on-demand programme service” has the meaning given by section 368A of the Communications Act 2003.

(8) Regulations under subsection (2) may make different provision for different purposes.

(9) Regulations under subsection (2) are to be made by statutory instrument.

(10) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

(11) But a statutory instrument containing the first regulations under that subsection may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

ANNOTATIONS:

Commencement Information

I1 S. 14 in force at 31.7.2017 for specified purposes by S.I. 2017/765, reg. 2(d)

15 MEANING OF “PORNOGRAPHIC MATERIAL”

(1) In this Part “pornographic material” (except in the expression “extreme pornographic material”) means any of the following—

(a) a video work in respect of which the video works authority has issued an R18 certificate;

(b) material that was included in a video work to which paragraph (a) applies, if it is reasonable to assume from its nature that its inclusion was among the reasons why the certificate was an R18 certificate; (c) any other material if it is reasonable to assume from its nature that any classification certificate issued in respect of a video work including it would be an R18 certificate;

(d) a video work in respect of which the video works authority has issued an 18 certificate, and that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal;

(e) material that was included in a video work to which paragraph (d) applies, if it is reasonable to assume from the nature of the material— (i) that it was produced solely or principally for the purposes of sexual arousal, and (ii) that its inclusion was among the reasons why the certificate was an 18 certificate;

(f) any other material if it is reasonable to assume from its nature— (i) that it was produced solely or principally for the purposes of sexual arousal, and (ii) that any classification certificate issued in respect of a video work including it would be an 18 certificate;

(g) a video work that the video works authority has determined not to be suitable for a classification certificate to be issued in respect of it, if— (i) it includes material (other than extreme pornographic material) that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal, and (ii) it is reasonable to assume from the nature of that



2017 C.30 SECTION 15(2):

"18 certificate" means a classification certificate which-

(a) contains, pursuant to section 7(2)(b) of the Video Recordings Act 1984, a statement that the video work is suitable for viewing only by persons who have attained the age of 18 and that no video recording containing that work is to be supplied to any person who has not attained that age...

material that its inclusion was among the reasons why the video works authority made that determination;

(h) material (other than extreme pornographic material) that was included in a video work that the video works authority has determined not to be suitable for a classification certificate to be issued in respect of it, if it is reasonable to assume from the nature of the material— (i) that it was produced solely or principally for the purposes of sexual arousal, and (ii) that its inclusion was among the reasons why the video works authority made that determination;

(i) any other material (other than extreme pornographic material) if it is reasonable to assume from the nature of the material— (i) that it was produced solely or principally for the purposes of sexual arousal, and (ii) that the video works authority would determine that a video work including it was not suitable for a classification certificate to be issued in respect of it.

(2) In this section— “18 certificate” means a classification certificate which—

(a) contains, pursuant to section 7(2)(b) of the Video Recordings Act 1984, a statement that the video work is suitable for viewing only by persons who have attained the age of 18 and that no video recording containing that work is to be supplied to any person who has not attained that age, and

(b) does not contain the statement mentioned in section 7(2)(c) of that Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;

“classification certificate” has the same meaning as in the Video Recordings Act 1984 (see section 7 of that Act);

“material” means—

(a) a series of visual images shown as a moving picture, with or without sound;

(b) a still image or series of still images, with or without sound; or

(c) sound;

“R18 certificate” means a classification certificate which contains the statement mentioned in section 7(2)(c) of the Video Recordings Act 1984 that no video recording containing the video work is to be supplied other than in a licensed sex shop;

“the video works authority” means the person or persons designated under section 4(1) of the Video Recordings Act 1984 as the authority responsible for making arrangements in respect of video works other than video games;

“video work” means a video work within the meaning of the Video Recordings Act 1984, other than a video game within the meaning of that Act.

ANNOTATIONS:

Commencement Information

I2 S. 15 in force at 31.7.2017 for specified purposes by S.I. 2017/765, reg. 2(e)

16. THE AGE-VERIFICATION REGULATOR: DESIGNATION AND FUNDING

(1) The Secretary of State may by notice designate any person, or any two or more persons jointly, as the age-verification regulator for the purposes of—

(a) all of the functions of the age-verification regulator under this Part, or

(b) any of those functions specified in the notice by which the designation is made.

(2) Different persons may be designated for the purposes of different functions.

(3) The Secretary of State may at any time by notice—

(a) revoke a designation under this section;

(b) designate one or more other persons in place of any person or persons designated under this section.

(4) The Secretary of State's power to designate a person under this section includes a power to designate the holder for the time being of any office or employment specified in the notice by which the designation is made.

(5) The Secretary of State must not make a designation under this section unless satisfied that—

(a) arrangements will be maintained by the age-verification regulator for appeals to which subsection (6) applies, and

(b) any person hearing an appeal under those arrangements will be sufficiently independent of the age-verification regulator.

(6) This subsection applies to appeals—

(a) by a person on whom a financial penalty has been imposed under section 19(1) or (10), against the imposition of that penalty;

(b) by a person to whom an enforcement notice has been given under section 19(2), against the giving of that notice;

(c) by a person identified as the non-complying person in a notice given under section 21, against the giving of that notice;

(d) by an internet service provider to whom a notice has been given under section 23(1), against the giving of that notice;

(e) by a person identified as the non-complying person in a notice given to an internet service provider under section 23(1), against the giving of that notice.

(7) A notice under subsection (1) or (3) must be published in the London, Edinburgh and Belfast Gazettes.

(8) The Secretary of State may pay grants or make loans to the age-verification regulator to cover expenditure incurred in the carrying out of its functions.

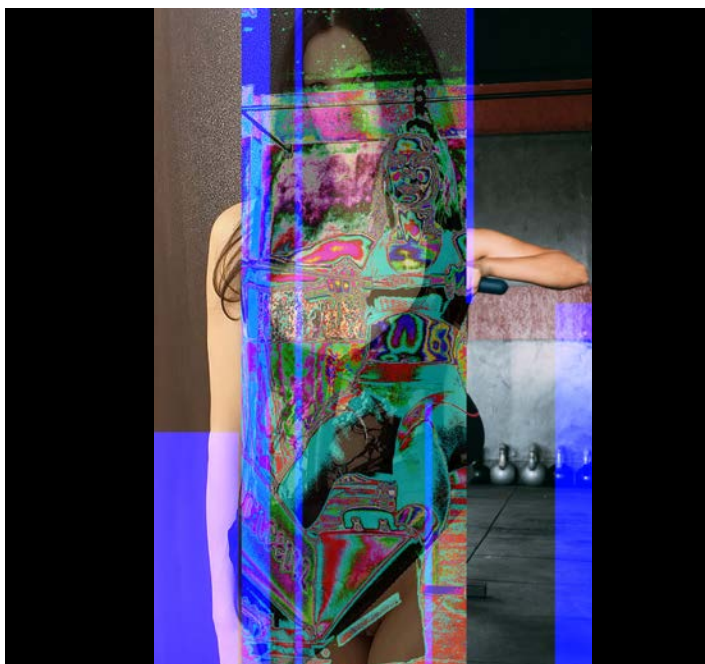
(9) Grants may be paid and loans made under subsection (8) subject to any conditions the Secretary of State thinks appropriate (including conditions as to repayment).

ANNOTATIONS:

Commencement Information

2017 C.30 SECTION 16(8):

The Secretary of State may pay grants or make loans to the age-verification regulator to cover expenditure incurred in the carrying out of its functions.



13 S. 16 in force at 31.7.2017 by S.I. 2017/765, reg. 2(f)

17. PARLIAMENTARY PROCEDURE FOR DESIGNATION OF AGE-VERIFICATION REGULATOR

(1) Where the Secretary of State proposes to make a designation under section 16, the Secretary of State must lay before both Houses of Parliament—

(a) particulars of that proposed designation, and

(b) a statement of the reasons why the Secretary of State is satisfied about the matters mentioned in section 16(5).

(2) The Secretary of State must not make the proposed designation until after the end of the period of 40 days beginning with the day on which the particulars of it were laid.

(3) If either House resolves within that period that the Secretary of State should not make the proposed designation, the Secretary of State must not make it.

(4) But subsection (5) applies, instead of subsections (2) and (3), where the proposed designation would be—

(a) the first to be made under section 16, or

(b) the first to be made under that section for the purposes of a particular function.

(5) The Secretary of State may not make the designation unless it has been approved by a resolution of each House of Parliament.

(6) But subsections (3) and (5) are without prejudice to the Secretary of State's power to lay before Parliament particulars of further proposed designations in accordance with this section.

(7) For the purposes of subsection (2)—

(a) where particulars of a proposed designation are laid before each House of Parliament on different days, the later day is to be taken as the day on which the particulars were laid before both Houses, and

(b) in reckoning any period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

ANNOTATIONS:

Commencement Information

14 S. 17 in force at 31.7.2017 by S.I. 2017/765, reg. 2(g)

PROSPECTIVE

18. REGULATOR'S POWER TO REQUIRE INFORMATION

(1) The age-verification regulator may by notice require a relevant person to provide it with any information which it requires for the purpose of exercising, or deciding whether to exercise, any function under this Part.

(2) The power in subsection (1) may only be exercised to require a relevant person to provide information which the age-verification regulator believes the relevant person has.

(3) A "relevant person" is—

(a) an internet service provider, or

(b) any other person who the age-verification regulator believes to be involved, or to have been involved, in making pornographic material available on the internet on a commercial basis to persons in the United Kingdom.

(4) A notice under subsection (1) must specify—

(a) the form and manner in which the information must be provided; and

(b) the time at which, or period within which, the information must be provided.

(5) The power in subsection (1) is not exercisable in relation to information in respect of which a claim to legal professional privilege (or, in Scotland, confidentiality of communications) could be maintained in legal proceedings.

2017 C.30 SECTION 18(1):

The age-verification regulator may by notice require a relevant person to provide it with any information which it requires for the purpose of exercising, or deciding whether to exercise, any function under this Part.

PROSPECTIVE

19. ENFORCEMENT BY REGULATOR OF SECTIONS 14 AND 18

(1) The age-verification regulator may impose a financial penalty on a person where it determines that the person—

(a) is contravening or has contravened section 14(1); or

(b) has failed to comply with a requirement to provide information under section 18.

(2) The age-verification regulator may give a person an enforcement notice where it determines that the person is contravening section 14(1).

(3) The age-verification regulator must not make a determination under subsection (1) or (2) in relation to a person unless it has allowed that person an opportunity to make representations about why that determination should not be made.

(4) The age-verification regulator may—

(a) impose a financial penalty under subsection (1) without also giving an enforcement notice under subsection (2);

(b) give an enforcement notice under subsection (2) without also imposing a financial penalty under subsection (1).

(5) No financial penalty may be imposed under subsection (1) in respect of a contravention of section 14(1) if—

(a) the contravention has ceased, and

(b) the limitation period in respect of the contravention has expired.

(6) For the purposes of subsection (5) the limitation period in respect of a contravention expires—

(a) at the end of the period of three years beginning with the day on which the contravention began; or

(b) if sooner, at the end of the period of one year beginning with the day on which the age-verification regulator became aware of the contravention.

(7) An “enforcement notice” is a notice which—

(a) specifies the determination made by the age-verification regulator under subsection (2); and

(b) requires the person to whom it is given to end the contravention of section 14(1).

(8) An enforcement notice must—

(a) include reasons for the age-verification regulator’s decision to give the notice; and

(b) fix a reasonable period for ending the contravention of section 14(1).

(9) A person to whom an enforcement notice has been given must comply with it.

(10) If a person contravenes subsection (9), the age-verification regulator may impose a financial penalty on that person.

(11) The obligation under subsection (9) is also enforceable by the age-verification regulator in civil proceedings—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or

(c) for any other appropriate remedy or relief.

(12) The imposition of a financial penalty (“the first penalty”) on a person in respect of a contravention of section 14(1) or subsection (9) does not prevent the imposition of another financial penalty on that person under subsection (1) or (10) (as the case may be) in respect of any continuation of that contravention after the first penalty is imposed.

(13) For further provision about financial penalties under this section, see section 20.

PROSPECTIVE

20. FINANCIAL PENALTIES IMPOSED BY REGULATOR

(1) The age-verification regulator may impose a financial penalty on a person under section 19(1) or (10) of such amount as the age-verification regulator considers appropriate and proportionate to the contravention, or failure to comply, in respect of which it is imposed.

(2) But the amount must not exceed whichever of the following is greater—

(a) £250,000;

(b) 5% of that person’s qualifying turnover (if any).

(3) For the purposes of subsection (2), a person’s “qualifying turnover” is—

(a) the amount of that person’s turnover for that person’s most recent complete accounting period; or

(b) where the age-verification regulator is deciding the amount of the penalty at a time when that person’s first accounting period has not yet ended, the amount that the age-verification regulator estimates to be that person’s likely turnover for that period.

(4) For the purposes of subsection (3), the amount of a person’s turnover for an accounting period is, in the event of a disagreement between that person and the age-verification regulator, the amount determined by the age-verification regulator.

(5) In deciding the amount of the financial penalty, the age-verification regulator must have regard to the guidelines or revised guidelines in force under this section.

(6) A financial penalty under section 19(1) or (10) must be imposed by notice given to the person on whom the penalty is imposed.

2017 C.30 SECTION 20(1):

The age-verification regulator may impose a financial penalty on a person under section 19(1) or (10) of such amount as the age-verification regulator considers appropriate and proportionate to the contravention, or failure to comply, in respect of which it is imposed.

(7) The notice must—

(a) fix a time by which the penalty must be paid by that person to the age-verification regulator; and

(b) in the case of a financial penalty under subsection (1) of section 19, specify the determination made by the age-verification regulator under that subsection.

(8) A financial penalty received by the age-verification regulator must be paid into the Consolidated Fund.

(9) The age-verification regulator must publish the guidelines it proposes to follow in deciding the amount of a financial penalty under section 19(1) or (10).

(10) The age-verification regulator may revise the guidelines from time to time and must publish any revised guidelines.

(11) The guidelines and any revised guidelines must be published in whatever way the age-verification regulator considers appropriate for bringing them to the attention of the persons who, in its opinion, are likely to be affected by them.

(12) The Secretary of State must lay before both Houses of Parliament the guidelines, and any revised guidelines, published under this section.

(13) Before publishing the guidelines or any revised guidelines, the age-verification regulator must consult—

(a) the Secretary of State; and

(b) such other persons as it considers appropriate.

(14) Before deciding how to publish the guidelines or any revised guidelines, the age-verification regulator must consult the Secretary of State.

(15) In subsection (3)— “accounting period”, in relation to a person, means a period in respect of which accounts are prepared in relation to that person or, where that person is an individual, in respect of that person’s principal business;

“turnover”, in relation to a person, means the amounts derived from the provision of goods and services by that person, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.

21 NOTICE BY REGULATOR TO PAYMENT-SERVICES PROVIDERS AND ANCILLARY SERVICE PROVIDERS

(1) Where the age-verification regulator considers that a person (“the non-complying person”) is—

(a) contravening section 14(1); or

(b) making extreme pornographic material available on the internet to persons in the United Kingdom,

it may give notice of that fact to any payment-services provider or ancillary service provider.

(2) A notice under subsection (1) must—

(a) identify the non-complying person in such manner as the age-verification regulator considers appropriate;

(b) state whether it is subsection (1)(a) that applies or subsection (1)(b) or both;

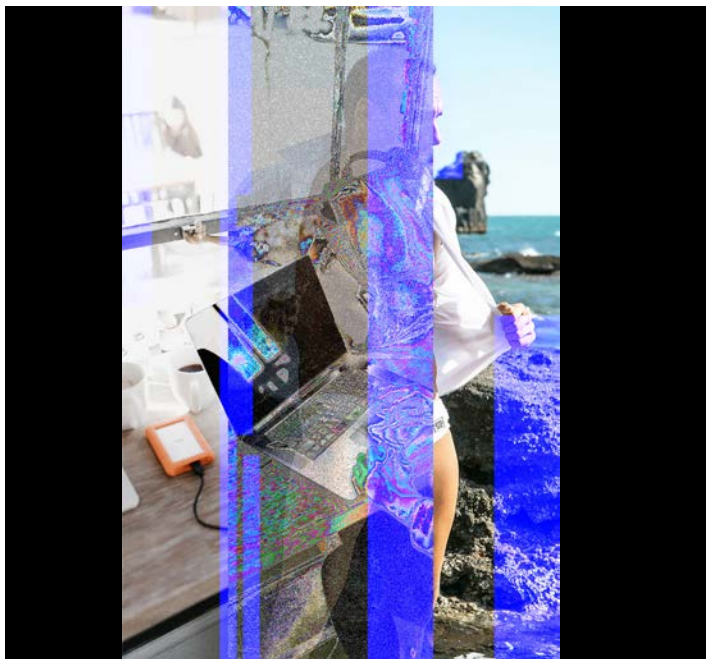
(c) provide such further particulars as the age-verification regulator considers appropriate.

(3) When the age-verification regulator gives notice under this section, it must inform the non-complying person, by notice, that it has done so.

(4) In this section a “payment-services provider” means a person who appears to the age-verification regulator to provide services, in the course of a business, which enable funds to be transferred in connection with the payment by any person for access to pornographic material or extreme pornographic material made available on the internet by the non-complying person.

(5) In this section an “ancillary service provider” means a person, other than a payment-services provider, who appears to the age-verification regulator to—

(a) provide, in the course of a business, services which enable or facilitate the making available of pornographic material or extreme pornographic material on the internet by the non-complying person; or



2017 C.30 SECTION 22(1):

In this Part "extreme pornographic material" means (subject to subsection (3)) material-

- (a) whose nature is such that it is reasonable to assume that it was produced solely or principally for the purposes of sexual arousal, and
- (b) which is extreme.

(b) advertise, on or via any internet site operated by the non-complying person or via any other means of accessing the internet operated or provided by that person, any goods or services provided in the course of a business.

(6) For the purposes of subsection (5)(b), a means of accessing the internet does not include a device or other equipment for doing so.

22. MEANING OF “EXTREME PORNOGRAPHIC MATERIAL”

(1) In this Part “extreme pornographic material” means (subject to subsection (3)) material—

(a) whose nature is such that it is reasonable to assume that it was produced solely or principally for the purposes of sexual arousal, and

(b) which is extreme.

(2) For the purposes of subsection (1)(b), material is extreme if—

(a) its content is as described in section 63(7) or (7A) of the Criminal Justice and Immigration Act 2008, and

(b) it is grossly offensive, disgusting or otherwise of an obscene character.

(3) Material to which paragraphs (a) and (b) of subsection (1) apply is not “extreme pornographic material” if it is or was included in a classified video work, unless it is material to which subsection (4) applies.

(4) This subsection applies to material—

(a) which has been extracted from a classified video work, and

(b) whose nature is such that it is reasonable to assume that it was extracted (with or without other material) solely or principally for the purposes of sexual arousal.

(5) In this section—

(a) “classified video work” means a video work in respect of which a video works authority has issued a classification certificate;

(b) “video work” means a video work within the meaning of the Video Recordings Act 1984;

(c) “video works authority” means a person designated under section 4(1) of the Video Recordings Act 1984;

(d) “classification certificate” has the same meaning as in the Video Recordings Act 1984 (see section 7 of that Act);

(e) “material” means— (i) a still image or series of still images, with or without sound; or (ii) a series of visual images shown as a moving picture, with or without sound.

ANNOTATIONS:

Commencement Information

I1 S. 22 in force at 31.7.2017 for specified purposes by S.I. 2017/765, reg. 2(i)

PROSPECTIVE

23. REGULATOR'S POWER TO REQUIRE INTERNET SERVICE PROVIDERS TO BLOCK ACCESS TO MATERIAL

(1) Where the age-verification regulator considers that a person ("the non-complying person") is—

(a) contravening section 14(1), or

(b) making extreme pornographic material available on the internet to persons in the United Kingdom,

it may give a notice under this subsection to any internet service provider.

(2) The notice must—

(a) identify the non-complying person in such manner as the age-verification regulator considers appropriate;

(b) state whether it is subsection (1)(a) that applies or subsection (1)(b) or both;

(c) require the internet service provider— (i) to take steps specified in the notice, or (ii) (if no such steps are specified) to put in place arrangements that appear to the provider to be appropriate,

so as to prevent persons in the United Kingdom from being able to access the offending material using the service it provides;

(d) provide such information as the regulator considers may assist the internet service provider in complying with any requirement imposed by the notice;

(e) provide information about the arrangements for appeals to which section 16(6)(d) applies;

(f) provide such further particulars as the regulator considers appropriate.

(3) The steps that may be specified or arrangements that may be put in place under subsection (2)(c) include steps or arrangements that will or may also have the effect of preventing persons in the United Kingdom from being able to access material other than the offending material using the service provided by the internet service provider.

(4) The notice may require the internet service provider to provide information specified in the notice, in a manner specified in the notice, to persons in the United Kingdom who—

(a) attempt to access the offending material using the service provided by the provider, and

(b) are prevented from doing so as a result of steps taken, or arrangements put in place, by the provider pursuant to the notice.

(5) The notice may specify the time by which the internet service provider must have complied with any requirement imposed by the notice.

(6) The notice may be varied or revoked by a further notice under subsection (1).

(7) The age-verification regulator may publish, in whatever way it considers appropriate, a notice given under subsection (1).



(8) It is the duty of an internet service provider to comply with any requirement imposed on it by a notice under subsection (1).

(9) That duty is enforceable in civil proceedings by the age-verification regulator—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or

(c) for any other appropriate relief or remedy.

(10) Before giving a notice to an internet service provider under subsection (1), the age-verification regulator must—

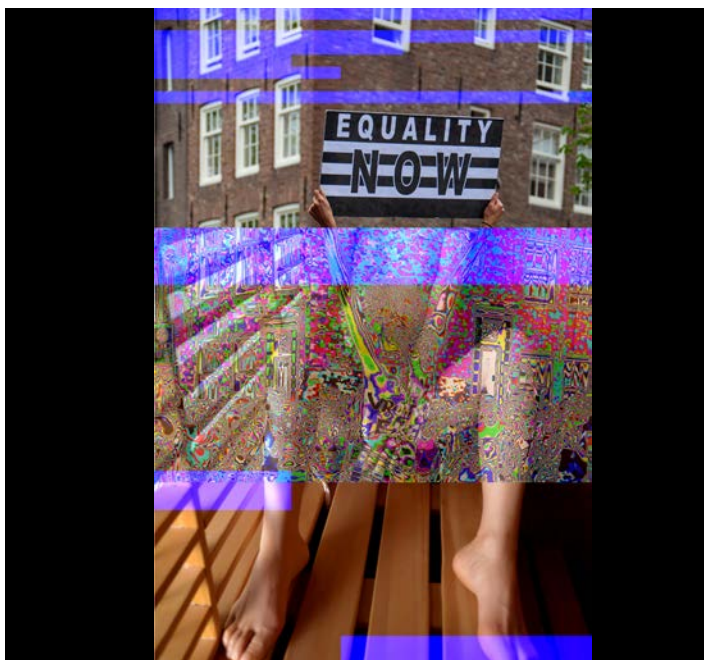
(a) inform the Secretary of State of its decision to do so, and

(b) give notice of that decision to the non-complying person under this subsection.

(11) A notice under subsection (10) (other than notice of a decision to revoke a notice under subsection (1)) must—

(a) where subsection (1)(a) applies— (i) say why the regulator considers that the non-complying person is contravening section 14(1), and (ii) indicate what steps the regulator considers might be taken by the non-complying person to comply with that section;

(b) where subsection (1)(b) applies, say why the regulator considers that the offending material is extreme pornographic material;



(c) indicate the circumstances in which the regulator may consider revoking the notice it has decided to give under subsection (1) and the manner in which the non-complying person may notify the regulator of steps taken to satisfy the regulator that the notice ought to be revoked;

(d) provide information about the arrangements for appeals to which section 16(6)(e) applies.

(12) In this section “the offending material”, in relation to a non-complying person, means the material which the age-verification regulator considers is—

(a) being made available in contravention of section 14(1) by the non-complying person; or

(b) extreme pornographic material which the non-complying person is making available on the internet to persons in the United Kingdom.

PROSPECTIVE

24. NO POWER TO GIVE NOTICE UNDER SECTION 23(1) WHERE DETRIMENTAL TO NATIONAL SECURITY ETC

(1) Before giving a notice under section 23(1) requiring an internet service provider to—

(a) take steps referred to in section 23(2)(c)(i), or

(b) put in place arrangements referred to in section 23(2)(c)(ii),

the regulator must consider whether the steps or arrangements would be likely to be detrimental to a matter mentioned in subsection (3).

(2) The regulator may not give a notice under section 23(1) where it appears to the regulator that the steps or arrangements would be likely to be detrimental to any of those matters.

(3) The matters are—

(a) national security;

(b) the prevention or detection of serious crime, within the meaning given in section 263(1) of the Investigatory Powers Act 2016;

(c) the prevention or detection of an offence listed in Schedule 3 to the Sexual Offences Act 2003.

25 GUIDANCE TO BE PUBLISHED BY REGULATOR

(1) Subject to the following provisions of this section, the age-verification regulator must publish, and revise from time to time—

(a) guidance about the types of arrangements for making pornographic material available that the regulator will treat as complying with section 14(1); and

(b) guidance for the purposes of section 21(1) and (5) about the circumstances in which it will treat services provided in the course of a business as enabling or facilitating the making available of pornographic material or extreme pornographic material.

(2) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(a), it must submit the draft to the Secretary of State.

(3) When draft guidance is submitted to the Secretary of State under subsection (2), the Secretary of State must lay that draft guidance before both Houses of Parliament.

(4) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(b), it must submit the draft to the Secretary of State for approval.

(5) When draft guidance is submitted to the Secretary of State under subsection (4), the Secretary of State may approve it either without modification or with such modifications as the Secretary of State decides should be made to it.

(6) Once the Secretary of State has approved draft guidance under subsection (5), the Secretary of State must lay the following before both Houses of Parliament—

(a) the draft guidance, incorporating any modifications the Secretary of State has decided should be made to it under that subsection, and

2017 C.30 SECTION 25(11):

The regulator must not publish guidance in the form of the draft laid before Parliament unless the draft has been approved by a resolution of each House of Parliament.

(b) if the draft incorporates such modifications, a statement of the Secretary of State's reasons for deciding that those modifications should be made.

(7) If, within the period of 40 days beginning with the day on which draft guidance is laid before Parliament under subsection (3) or (6), either House resolves not to approve that draft guidance, the age-verification regulator must not publish guidance in the form of that draft.

(8) If no such resolution is made within that period, the age-verification regulator must publish the guidance in the form of the draft laid before Parliament.

(9) But subsection (11) applies, instead of subsections (7) and (8), in a case falling within subsection (10).

(10) The cases falling within this subsection are—

(a) the case where draft guidance is laid before Parliament under subsection (3) and no previous guidance has been published under subsection (1)(a) by the age-verification regulator; and

(b) the case where draft guidance is laid before Parliament under subsection (6) and no previous guidance has been published under subsection (1)(b) by the age-verification regulator.

(11) The regulator must not publish guidance in the form of the draft laid before Parliament unless the draft has been approved by a resolution of each House of Parliament.

(12) Subsections (7) and (11) do not prevent new draft guidance from being laid before Parliament.

(13) For the purposes of subsection (7)—

(a) where draft guidance is laid before each House of Parliament on different days, the later day is to be taken as the day on which it was laid before both Houses, and

(b) in reckoning any period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

(14) References in this section to guidance and draft guidance include references to revised guidance and draft revised guidance.

ANNOTATIONS:

Commencement Information

11 S. 25 in force at 31.7.2017 by S.I. 2017/765, reg. 2(j)

26. EXERCISE OF FUNCTIONS BY REGULATOR

(1) The age-verification regulator may, if it thinks fit, choose to exercise its powers under sections 19, 21 and 23 principally in relation to persons who, in the age-verification regulator's opinion—

(a) make pornographic material or extreme pornographic material available on the internet on a commercial basis to a large number of persons, or a large number of persons under the age of 18, in the United Kingdom; or

(b) generate a large amount of turnover by doing so.

(2) The age-verification regulator may—

(a) carry out such consultation with any person as it considers appropriate for the purposes of exercising, or considering whether to exercise, any function under this Part;

(b) carry out, commission or support (financially or otherwise) any research which it considers appropriate for the purposes of exercising, or considering whether to exercise, any function under this Part;

(c) publish the results of that research.

ANNOTATIONS:

Commencement Information

I1 S. 26(2) in force at 31.7.2017 by S.I. 2017/765, reg. 2(k)

27. GUIDANCE BY SECRETARY OF STATE TO REGULATOR

(1) The Secretary of State may issue guidance to the age-verification regulator in relation to the exercise of the regulator's functions, and may from time to time revise that guidance.

(2) The guidance may cover (among other things) the following matters—

(a) considerations to be applied in determining— (i) whether arrangements for making pornographic material available comply with section 14(1); (ii) whether a person is an ancillary service provider, for the purposes of section 21;

(b) the approach to be taken by the regulator to the exercise of its powers to give notices under sections 19, 21 and 23;

(c) the preparation and publication of guidance and reports by the regulator and the content of such guidance and reports;

(d) the maintenance by the regulator of arrangements meeting the requirements of section 16(5)(a) and (b).

(3) The regulator must have regard to the guidance.

(4) The Secretary of State must lay before both Houses of Parliament the guidance, and any revised guidance, issued under this section.

ANNOTATIONS:

Commencement Information

I1 S. 27 in force at 31.7.2017 by S.I. 2017/765, reg. 2(l)

PROSPECTIVE

28. REQUIREMENTS FOR NOTICES GIVEN BY REGULATOR UNDER THIS PART

(1) The age-verification regulator may give notice to a person under section 18, 19, 20, 21 or 23 by sending the notice to that person—

(a) by post to that person's proper address; or

2017 C.30 SECTION 27(1):

The Secretary of State may issue guidance to the age-verification regulator in relation to the exercise of the regulator's functions, and may from time to time revise that guidance.

(b) by email to that person's email address.

(2) In the case of a notice given under section 18, 21(1) or 23(1), a person's proper address for the purposes of subsection (1)(a), and section 7 of the Interpretation Act 1978 in its application to that subsection, is—

(a) where that person is a body corporate, the address of its registered office or principal office;

(b) where that person is a partnership or an unincorporated association or body, the address of its principal office;

(c) in any other case, that person's last known address.

(3) In the case of a notice given under section 19, 20, 21(3) or 23(10), a person's proper address for the purposes of subsection (1)(a), and section 7 of the Interpretation Act 1978 in its application to that subsection, is any address at which the age-verification regulator believes, on reasonable grounds, that the notice will come to the attention of that person or (where that person is a body corporate) any director or other officer of that body corporate.

(4) For the purposes of subsection (1)(b), a person's email address is—

(a) any email address published for the time being by that person as an address for contacting that person; or

(b) if there is no such published address, any email address by means of which the age-verification regulator believes, on reasonable grounds, that the notice will come to the attention of that person or (where that person is a body corporate) any director or other officer of that body corporate.

(5) A notice under section 18, 19, 20, 21 or 23 sent to a person by email is to be taken to have been given to that person 48 hours after it is sent.

(6) In the case of—

(a) a body corporate registered outside the United Kingdom;

(b) a partnership carrying on business outside the United Kingdom; or

(c) an unincorporated association or body with offices outside the United Kingdom,

the references in subsection (2) to its principal office include references to its principal office in the United Kingdom (if any).

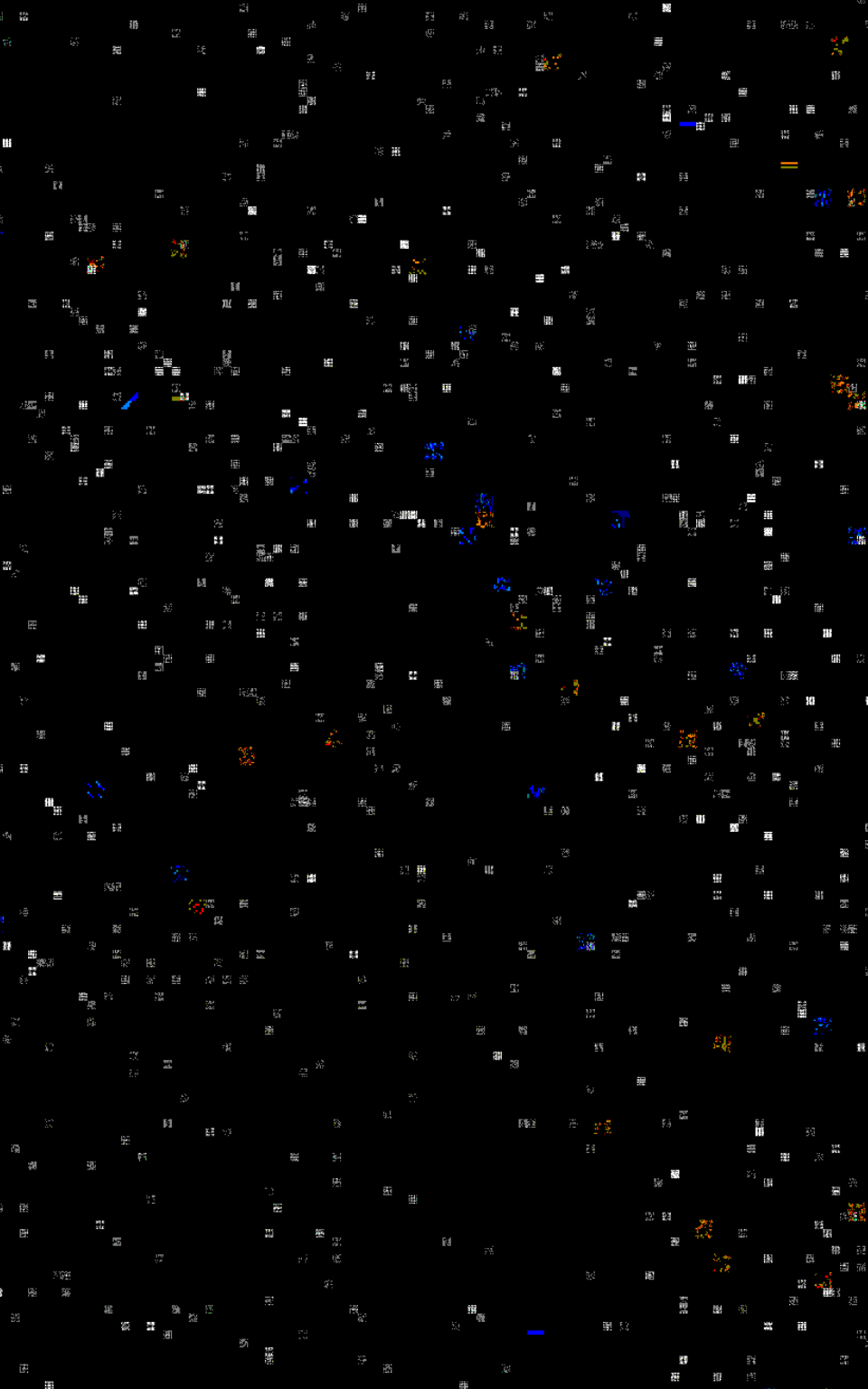
(7) In this section— “director” includes any person occupying the position of a director, by whatever name called;

“officer”, in relation to a body corporate, includes a director, a manager, a secretary or, where the affairs of the body corporate are managed by its members, a member.

PROSPECTIVE

29. REPORT ON THIS PART

- (1) Within 18 months, but not before 12 months, of the coming into force of this Part, the Secretary of State must produce a report on the impact and effectiveness of the regulatory framework provided for in this Part.
- (2) Before publishing this report, the Secretary of State must consult on the definitions used within this Part.
- (3) The report must be laid before each House of Parliament.



chapter 3

TO BLOCK OR NOT TO BLOCK

On December 17 2018 Tumblr enacted its new community guidelines banning any content showing such things as ‘female presenting nipples’ with ‘breastfeeding’ and ‘nudity found in art’ still allowed. Which in itself is fine; disappointing to some users but it’s Tumblr’s choice.

But it becomes objectionable when the ‘machine-learning’ and human team-up ban completely innocent posts, but ignore entire blogs showing what is definitely porn. Not to mention the persistence of racist, sexist, homophobic, etc. blogs and users that are still slipping through.

[https://support.tumblr.com/
post/180758979032/updates-to-
tumblrs-community-guidelines](https://support.tumblr.com/post/180758979032/updates-to-tumblrs-community-guidelines)

[https://www.theatlantic.com/
technology/archive/2018/12/tumblr-
adult-content-porn/577471/](https://www.theatlantic.com/technology/archive/2018/12/tumblr-adult-content-porn/577471/)

[https://slate.com/
technology/2018/12/tumblr-porn-
should-be-welcomed-not-banned.html](https://slate.com/technology/2018/12/tumblr-porn-should-be-welcomed-not-banned.html)

[https://www.washingtonpost.com/
business/2018/12/04/tumblrs-nudity-
crackdown-means-pornography-will-be-
harder-find-its-platform-than-nazi-
propaganda/?utm_term=.360cbc87c7ac](https://www.washingtonpost.com/business/2018/12/04/tumblrs-nudity-crackdown-means-pornography-will-be-harder-find-its-platform-than-nazi-propaganda/?utm_term=.360cbc87c7ac)

[https://hypebeast.com/2019/3/tumblr-
traffic-dropped-by-150-million-adult-
content-ban](https://hypebeast.com/2019/3/tumblr-traffic-dropped-by-150-million-adult-content-ban)

Updates to Tumblr's Community Guidelines

Today we announced some big updates¹ to our Community Guidelines² and what kind of content is permitted on Tumblr. Adult content will no longer be allowed here. While we do not judge anyone for their desire to post, engage with, or view this stuff, it is time for us to change our relationship with it.

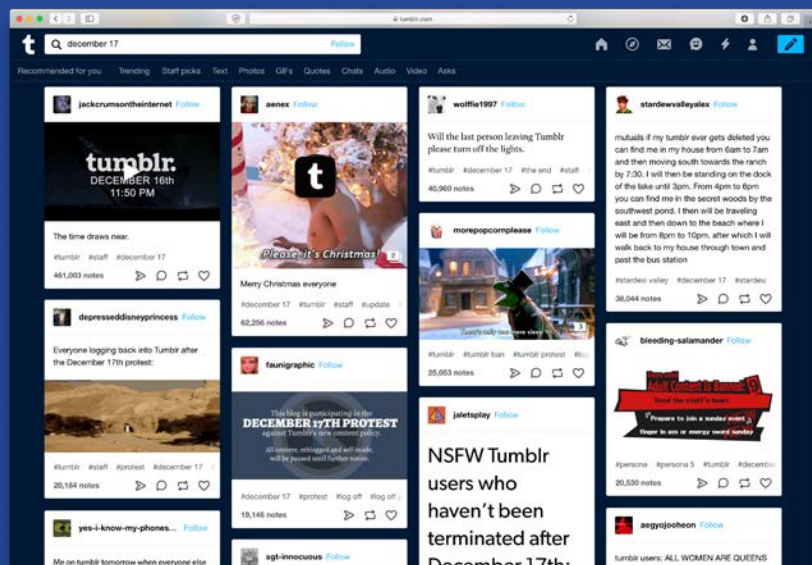
We expect you may have some questions on how this will affect you, and we're here to make sure those questions get answered.

When does the new policy take effect?

Our new Community Guidelines will go into effect on December 17, 2018.

Newly uploaded content flagged as adult will no longer be allowed on Tumblr. We'll

#december 17



also begin flagging and removing existing adult content with the ultimate goal of removing as much of it as we can.

What is considered adult content?

Adult content primarily includes photos, videos, or GIFs that show real-life human genitals or female-presenting nipples, and any content – including photos, videos, GIFs and illustrations – that depicts sex acts.

What is still permitted?

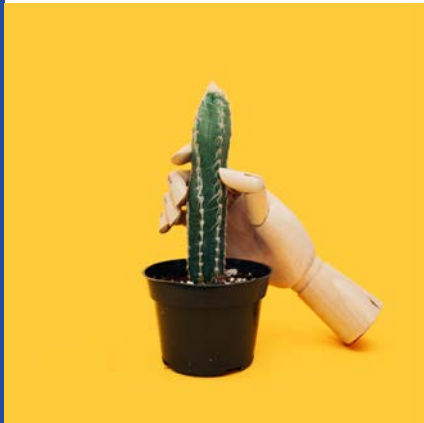
Examples of exceptions that are still permitted are exposed female-presenting nipples in connection with breastfeeding, birth or after-birth moments, and health-related situations, such as post-mastectomy or gender confirmation surgery. Written content such as erotica, nudity related to political or newsworthy speech, and nudity found in art, such as sculptures and illustrations, are also stuff that can be freely posted on Tumblr.

What about Safe Mode?

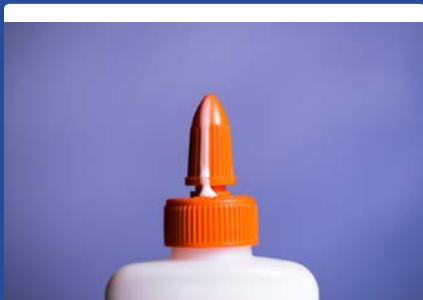
Our new policy negates the need for



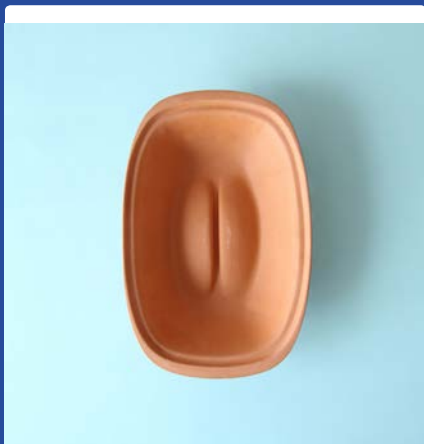
▶ ◀ ⌂ ❤



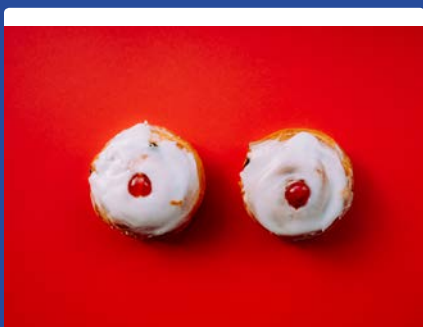
▶ ◀ ⌂ ❤



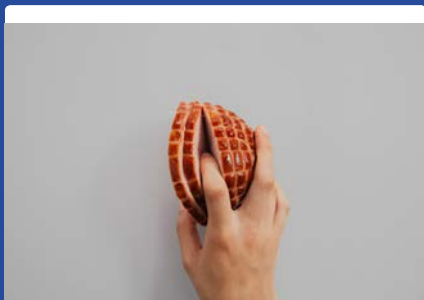
▶ ◀ ⌂ ❤



▶ ◀ ⌂ ❤



▶ ◀ ⌂ ❤



▶ ◀ ⌂ ❤



Safe Mode so this feature will no longer exist. These new policies are the same regardless of your age. Read more [here](#)³.

My content was flagged, but I don't think it should be. What should I do?

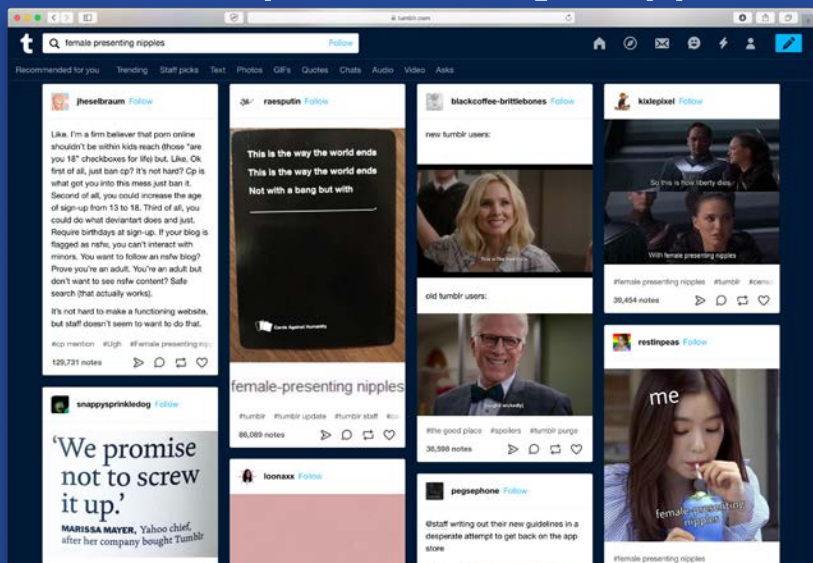
If you feel that we have categorized your post incorrectly, you can appeal this decision with the form that was sent to you via email or use the button on the post in question. Please note that this process is only possible to complete on the web or with Tumblr app version 12.2 or higher.

Read more about how to review your content and appeal [here](#)⁴.

What goes into classifying content as adult?

This work requires a mix of machine-learning classification and human moderation by our Trust & Safety team – the group of individuals who help moderate Tumblr. We've been expanding the team to handle the increased workload, and we will continue to expand as needed.

#female presenting nipples



Computers are better than humans at scaling process – and we need them for that – but they’re not as good at making nuanced, contextual decisions. This is an evolving process for all of us, and we’re committed to getting this right. That’s why when you appeal a post we’ve marked as adult, it gets sent to a real, live human who will look it over with their real, live human eye(s).

Will I see any adult content on Tumblr after December 17, 2018?

Due to the technical challenges that come with moderation at scale you may continue to see some adult content. This is true for all types of content that might be in violation of our guidelines. At any given moment, millions of people are posting to Tumblr. To review everything and to get it right is complex, but we’re committed to continuously improving.

As always, if you see a post with adult content that you don’t want to see, you can report it directly to our Trust & Safety team. Learn about how to report content [here](#)⁵.



👉 📷 🔄 ❤️



👉 📷 🔄 ❤️



👉 📷 🔄 ❤️



👉 📷 🔄 ❤️



What will happen to my adult content already on Tumblr?

Starting today, we will begin sending out email notices to members of the Tumblr community whose content has been flagged as adult. This email will provide a link to the post(s) in question and a form to appeal our decision if you think we have made a mistake. Starting on December 17, 2018, any post(s) that have been flagged will be reverted to a private setting viewable only by you. If you want to learn more about how to see those posts, please visit our [Help Center](#)⁶.

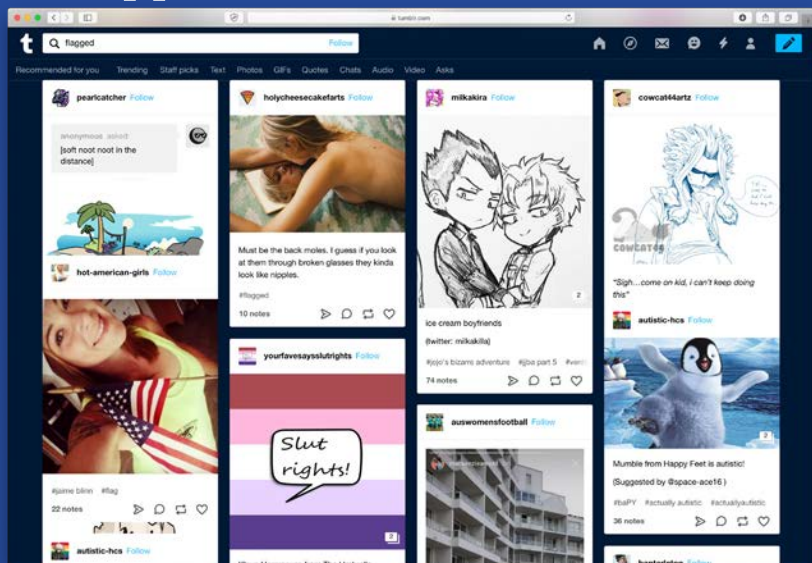
As always, please make sure [the email associated with your Tumblr account](#)⁷ is one you use regularly. It's how we get in touch when we need you!

You can also download the contents of your blog(s) before these policy changes take effect. Find out how [here](#)⁸.

What if my blog (not to be confused with posts) was marked as "explicit" before December 17, 2018?

Blogs that have been either self-flagged

#flagged



or flagged by us as “explicit” per our old policy and before December 17, 2018 will still be overlaid with a content filter when viewing these blogs directly. While some of the content on these blogs may now be in violation of our policies and will be actioned accordingly, the blog owners may choose to post content that is within our policies in the future, so we’d like to provide that option. Users under 18 will still not be allowed to click through to see the content of these blogs. The avatars and headers for these blogs will also be reverted to the default settings.

You can check and see if your blog is marked as explicit per our old policy in [your visibility settings](#)⁹. If you think your blog has been erroneously marked as explicit, please send an appeal [here](#)¹⁰.

Will I get kicked off of Tumblr if I’ve uploaded adult content in the past?

We’re removing content, not people. However, those who repeatedly and deliberately post new content that violates our updated guidelines may have their account deactivated per our [Terms of Service](#)¹¹. If you feel you’ve been



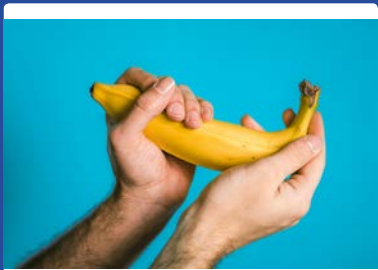
▶ ◻ ◻ ◻ ◻



▶ ◻ ◻ ◻ ◻



▶ ◻ ◻ ◻ ◻



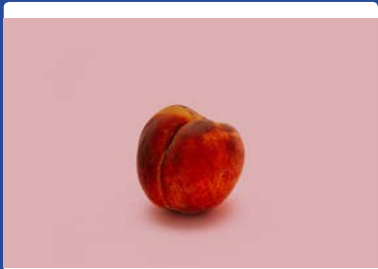
▶ ◻ ◻ ◻ ◻



▶ ◻ ◻ ◻ ◻



▶ ◻ ◻ ◻ ◻



▶ ◻ ◻ ◻ ◻

incorrectly suspended, you can appeal [here](#)¹².

What if I reblogged adult content?

The original poster of the content will be notified of its removal, and it will no longer be on your blog.

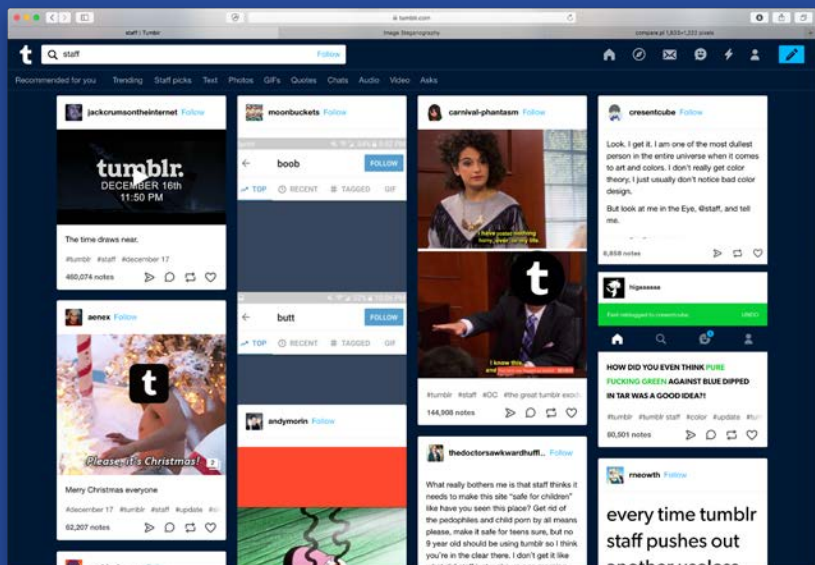
What if I have more “What if” questions?

We got you. You can review our updated Community Guidelines right [over here](#)¹³. If you still haven’t found an answer to your question, you can ask [our support team](#)¹⁴.

<3 Tumblr

#news #tumblr #staff #tumblr #support
39,847 notes Dec 3rd, 2018

#staff



1. <https://staff.tumblr.com/post/180758987165/a-better-more-positive-tumblr>
2. https://www.tumblr.com/policy/new_community
3. <https://tumblr.zendesk.com/hc/en-us/articles/231885248>
4. <https://tumblr.zendesk.com/hc/en-us/articles/360011657153>
5. <https://tumblr.zendesk.com/hc/en-us/articles/226270628>
6. <https://tumblr.zendesk.com/hc/en-us/articles/360011657153>
7. <https://tumblr.zendesk.com/hc/en-us/articles/226167287>
8. <https://tumblr.zendesk.com/hc/articles/360005118894>
9. <https://tumblr.zendesk.com/hc/en-us/articles/115011611747>
10. <https://www.tumblr.com/support>
11. <https://www.tumblr.com/policy/en/terms-of-service>
12. <https://tumblr.zendesk.com/hc/articles/360011657153>
13. <https://www.tumblr.com/policy/en/community>
14. <https://www.tumblr.com/support>

Coda

There is overwhelming evidence that simply banning porn won't work – it can have a huge impact on how viewers use the internet, besides being an invasion of privacy.

But this is just the start. Whether children even need to be protected from porn is a whole other question, but as the three case studies here show, the issue of moderation and censorship is as prevalent now as ever and goes as far as threatening our basic freedoms on the internet.

You only have a few weeks left until the ban; find yourself a good VPN.

Published May 2019

Designed and compiled for an
MA Book Design project in the
Department of Typography and
Graphic Communication at the
University of Reading.

Unedited and manipulated
images used in this publi-
cation are all derived from
public domains. Copyright of
all screenshots belongs to
the rights holder of each
respective source.

Download the ebook and all
images used for personal use
from:

[archive.org/details/
CanaryInTheCoalMine_2019](https://archive.org/details/CanaryInTheCoalMine_2019)

Designer and editor:
Rich Mason